

Message Text

CONFIDENTIAL

PAGE 01 USBERL 00427 041311Z

46

ACTION EUR-12

INFO OCT-01 ISO-00 IO-11 ACDA-05 SAJ-01 EB-07 OMB-01

CIAE-00 COME-00 INR-07 LAB-04 NSAE-00 SIL-01 DODE-00

PM-04 H-02 L-03 NSC-05 PA-01 PRS-01 SP-02 SS-15

USIA-06 /089 W

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P R 041154Z MAR 76

FM USMISSION USBERLIN

TO AMEMBASSY BONN PRIORITY

INFO SECSTATE WASHDC 2063

AMEMBASSY BERLIN UNN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO

C O N F I D E N T I A L USBERLIN 0427

E.O.11652: GDS

TAGS: PGOV, PFOR, WB, GE, GW

SUBJECT: REICHSBAHN NON-COMPLIANCE WITH ALLIED
ORDERS

REF: USBERLIN 410

1. LEGAL ADVISERS HAVE DEVELOPED MODEL ORDER THAT
MIGHT BE SERVED ON INDIVIDUAL FIRMS ORDERING THEM TO
CEASE UNAUTHORIZED CONSTRUCTION WORK FOR REICHSBAHN.
ORDER, BASED ON INJUNCTION PRINCIPLE, WOULD BE UN-
PUBLISHED BK/O ENFORCEABLE BY BEERLIN COURT UPON PERSONS
WITH ACTUAL NOTICE AND WOULD PROVIDE FINE FOR EACH
DAY OF NON-COMPLIANCE. END SUMMARY.

2. FOLLOWING IS TEXT OF DRAFT MODEL ORDER:
BEGIN TEXT: THE ALLIED KOMMANDATURA, TAKING NOTE THAT
THE FIRM STAHLBETON UND GLEISBAU HILBIG & VENTZKE,
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PAGE 02 USBERL 00427 041311Z

TAUENTZHENSTRASSE, 16, BERLIN 30 IS CARRYING OUT

CONSTRUCTION WORK AT THE S-BAHN STATIONS WANNSEE AND CHARLOTTENBURG ON BEHALF OF THE DEUTSCHE REICHSBAHN THAT HAS NOT BEEN AUTHORIZED BY THE APPROPRIATE SECTOR AUTHORITIES AND THAT DUE NOTICE HAS BEEN GIVEN PUBLICLY BY BK/O(49)217 AND BK/O(75)15 THAT SUCH AUTHORIZATION IS REQUIRED, ORDERS AS FOLLOWS: THE ABOVE-NAMED FIRM OR ANY FIRM CONTRACTING ON THEIR BEHALF SHALL CEASE CONSTRUCTION WORK AT S-BAHN STATIONS WANNSEE AND CHARLOTTENBURG IMMEDIATELY AND MAY NOT RESUME SUCH WORK UNTIL THAT WORK HAS BEEN AUTHORIZED BY THE APPROPRIATE SECTOR AUTHORITIES. VIOLATION OF THIS ORDER SHALL BE PUNISHED BY A FINE NOT TO EXCEED DM5,000 FOR EACH DAY OR PART OF A DAY IN WHICH CONSTRUCTION WORK IS PERFORMED.

IN ACCORDANCE WITH ORDINANCE NO 511, ARTICLE 5, PARAGRAPH 4, OF THE UNITED STATES, BRITISH AND FRENCH SECTORS, EVERY DIRECTOR, OFFICIAL, PARTNER OR EMPLOYEE OF THE ABOVE-NAMED FIRM OR OF ANY FIRM CONTRACTING ON THEIR BEHALF WHO IN ANY CAPACITY KNOWINGLY TAKES ANY PART WHATSOEVER IN UNAUTHORIZED CONSTRUCTION WORK IN VIOLATION OF THIS ORDER MAY BE PROSECUTED THEREFORE AS THOUGH SUCH OFFENSE HAD BEEN COMMITTED BY HIM IN HIS PERSONAL CAPACITY. THE APPROPRIATE SENAT AUTHORITIES WILL TAKE ALL NECESSARY STEPS TO ENSURE THAT THIS ORDER IS IMPLEMENTED.

THIS ORDER ENTERS INTO FORCE ON (BLANK DATE). AS IT IS ENVISAGED THAT IT SHALL BE APPLIED ONLY TO PERSONS WITH ACTUAL NOTICE THEREOF, PUBLICATION IN CONFORMITY WITH BK/O(64)4 IS NOT REQUIRED. END TEXT.

3. COMMENT: LEGAL ADVISERS ENVISAGED THAT NAME OF ANY FIRM DOING UNAUTHORIZED WORK FOR REICHSBAHN THAT DID NOT VOLUNTARILY CEASE SUCH WORK COULD BE WRITTEN INTO ORDER. HILBIG & VENTZKE WAS USED AS ILLUSTRATION; ITS CLOSE CONNECTION TO REICHSBAHN MAKES IT POSSIBLY MOST RECALCITRANT WEST BERLIN CONTRACTOR. LIKEWISE, NAMES OF ADDITIONAL UNAUTHORIZED CONSTRUCTION SITES COULD BE ADDED AS REQUIRED. LEGAL ADVISERS CONSIDERED THAT TRIPARTITE BK/O RATHER THAN INDIVIDUAL SECTOR ORDERS WOULD BE PREFERABLE OPTICALLY TO CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USBERL 00427 041311Z

DEMONSTRATE ALLIED SOLIDARITY AND PERHAPS NECESSARY FOR JURISDICTIONAL PURPOSES. HILBIG & VENTZKE, FOR EXAMPLE, HAS HEADQUARTERS IN BRITISH SECTOR AND IS WORKING AT WANNSEE STATION IN U.S. SECTOR. IT IS ENVISAGED THAT ORDER WOULD BE ENFORCED ONLY AGAINST PERSONS WITH ACTUAL NOTICE. THERE WOULD THUS BE NO NEED FOR PUBLICATION, FACT WHICH MIGHT MAKE ULTIMATE REICHSBAHN COMPLIANCE SLIGHTLY EASIER. PENALTY OF

DM 5,000 WAS CHOSEN AS COMPROMISE FIGURE THAT WOULD BE MORE BELIEVABLE THAN THAT OF UP TO FIVE YEARS IN PRISON AND/OR FINE UP TO DM25,000 THAT ORDINANCE 511 PROVIDES FOR DISOBEDIENCE OF ALLIED ORDER THAT DOES NOT STATE ITS OWN PENALTY. AT SAME TIME, POSSIBILITY OF ADDING FINES FOR EACH DAY OF NON-COMPLIANCE (FAMILIAR PRACTICE IN GERMAN INJUNCTIONS RELATED TO CONSTRUCTION) AND HOLDING COMPANY OFFICERS AND EMPLOYEES INDIVIDUALLY LIABLE FOR DISOBEDIENCE (POSSIBILITY SPECIFICALLY ENVISAGED IN ORDINANCE 511) WOULD MAKE PENALTY/STIFF ENOUGH TO ENCOURAGE COMPLIANCE. ORDER WOULD PRESUMABLY BE SERVED BY BERLIN POLICE, IN FIRST INSTANCE AT LEAST, UPON COMPANY HEADQUARTERS TO AVOID SCENE ON REICHSBAHN PROPERTY, AND WOULD BE ENFORCED IF NECESSARY BY BERLIN CRIMINAL COURT WHICH ALLIED KOMMANDATURA WOULD, HOWEVER, HAVE TO AUTHORIZE TO EXERCISE JURISDICTION IN SEPARATE ACT.

4. ORDER WILL, OF COURSE, BE HELD IN RESERVE UNTIL SUCH TIME AS IT MIGHT APPEAR TO EMBASSIES THAT HALT IN CONSTRUCTION WILL BE REQUIRED TO PRODUCE REICHSBAHN COMPLIANCE WITH BK/O(75)15. GEORGE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CONSTRUCTION, TREATY COMPLIANCE, TEXT, REICHSBAHN, BERLIN ACCESS DISPUTES
Control Number: n/a
Copy: SINGLE
Draft Date: 04 MAR 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976USBERL00427
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760082-1123
From: USBERLIN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760393/aaaaddxs.tel
Line Count: 137
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 76 USBERLIN 410
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 19 APR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <19 APR 2004 by ElyME>; APPROVED <20 APR 2004 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: REICHSBAHN NON-COMPLIANCE WITH ALLIED ORDERS
TAGS: PGOV, PFOR, ELTN, WB, GC, GE
To: BONN
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006